Wintercorn Malaysia Sdn Bhd v Ketua Pengarah Kastam & Anor

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01(f)-22–08 OF 2024(W)
ZABARIAH YUSOF, HARMINDAR SINGH, ABDUL KARIM, ABU BAKAR JAIS AND HANIPAH FARIKULLAH FCJJ
30 JULY 2025

Customs and Excise — Sales tax — Exemption — Respondent granted certificates of exemption to appellant specific and limited to sale and purchase of edible oil products — Appellant not eligible for tax exemption concerning packaging materials — Appellant applied to quash respondent's decision in issuing bill of demand for sales tax — Whether purchase of packaging materials by appellant to fill edible oil were eligible for tax exemption

The appellant ie Wintercorn Malaysia Sdn Bhd ('Wintercorn') was principally engaged in trading, namely, the export and sale of edible oil products. It did not manufacture the edible oil products. Instead, it sourced for edible palm oil and packaging materials from Malaysian manufacturers. As for the packaging materials, it would be delivered to its appointed packer (a Malaysian business entity), which would then fill the edible oil into the packaging materials. The packaging materials would be labelled accordingly and packed into carton boxes. Upon completion, the goods would be delivered to the port for export to its customers. For purposes of its repacking exercise, Wintercorn applied online to the respondent for tax exemption on the purchase of the packaging materials ('the exemption order') under item 57 of Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 ('PU(A) 210'). Its online applications did not declare any description or tariff code of the sale and purchase of the packaging materials, but only for tax exemption of the purchase of the edible oil products. Wintercorn was granted 17 certificates of exemption by the respondent which were specific and limited to the sale and purchase of edible oil products. Later, Wintercorn was informed that it was not eligible for tax exemption under item 57 of Schedule A of PU(A) 210 concerning the packaging materials. The respondent issued the bill of demand for sales tax amounting to RM3,697,852.16 to Wintercorn. As a result, Wintercorn filed an application for judicial review for, inter alia, an order for certiorari to quash the respondent's decision in the bill of demand. The learned High Court judge held that there was no basis for the respondent to reject Wintercorn's application for tax exemption according to item 57 of Schedule A of PU(A) 210 and hence Wintercorn's judicial review application was allowed. Aggrieved, the respondent appealed. The Court of Appeal allowed the appeal, set aside the High Court's decision and ordered that the respondent's stance

and decision be reinstated. Hence, this appeal by Wintercorn. The issue for consideration was whether the purchase of packaging materials by Wintercorn to fill edible oil were eligible for tax exemption under item 57 of Schedule A of PU(A) 210.

Held, dismissing the appeal:

(1) Wintercorn's online applications did not declare any description or tariff code of the sale and purchase of the packaging materials, but for the exemption of the purchase of the edible oil products only. Hence, the 17 certificates of exemptions which were granted by the respondent were not granted for the exemption on the sale and purchase of the packaging materials by the appellant. Thus, the declaration and application for exemption during that material time must strictly be for the purchase of edible oil products (see paras 74–75).

(2) There was no ambiguity in item 57 of Schedule A of PU(A) 210 where it did not expressly or impliedly include the purchase of packaging materials. Item 53 of Schedule A of PU(A) 210 was the specific provision which governed exemption for packaging materials. Item 57 of Schedule A of PU(A) 210 was a general provision which provided exemption for locally manufactured goods for exports. It did not provide exemption for repackaging materials. The appellant's purchase of packaging materials (for trader's repackaging) was not exempted under the subject exemption under item 57 Schedule A of PU(A) 210 (see paras 80 & 83–84).

[Bahasa Malaysia summary

Perayu iaitu Wintercorn Malaysia Sdn Bhd ('Wintercorn') pada dasarnya terlibat dalam perniagaan, iaitu, eksport dan jualan produk minyak makan. Ia tidak mengeluarkan produk minyak makan. Sebaliknya, ia mendapatkan minyak sawit yang boleh dimakan dan bahan pembungkusan daripada pengeluar di Malaysia. Bagi bahan pembungkusan, ia akan dihantar kepada pembungkus yang dilantik (sebuah entiti perniagaan dari Malaysia), yang kemudiannya akan mengisi minyak makan ke dalam bahan pembungkusan tersebut. Bahan pembungkusan akan dilabelkan mengikut keperluan dan dibungkus ke dalam kotak karton. Setelah siap, barangan akan dihantar ke pelabuhan untuk dieksport kepada pelanggan mereka. Bagi tujuan kerja pembungkusan semula, Wintercorn memohon secara dalam talian kepada responden untuk pelepasan cukai atas pembelian bahan pembungkusan ('perintah pelepasan'), di bawah butiran 57 Jadual A Perintah Cukai Jualan (Orang Yang Dikecualikan daripada Pembayaran Cukai) 2018 ('PU(A) 210)'. Permohonan dalam talian mereka tidak menyatakan apa-apa huraian atau kod tarif bagi jual beli bahan pembungkusan, tetapi hanya memohon pelepasan cukai bagi pembelian produk minyak makan. Wintercorn telah diberikan 17 sijil pengecualian oleh responden yang khusus dan terhad kepada jual beli

produk minyak makan sahaja. Kemudian, Wintercorn dimaklumkan bahawa mereka tidak layak untuk pelepasan cukai di bawah butiran 57 Jadual A PU(A) 210 berkenaan bahan pembungkusan. Responden mengeluarkan notis tuntutan cukai jualan berjumlah RM3,697,852.16 kepada Wintercorn. Akibatnya, Wintercorn memfailkan permohonan semakan kehakiman untuk, antara lain, mendapat perintah certiorari bagi membatalkan keputusan responden dalam notis tuntutan tersebut. Hakim Mahkamah Tinggi memutuskan bahawa tidak ada asas untuk responden menolak permohonan pelepasan cukai Wintercorn mengikut butiran 57 Jadual A PU(A) 210 dan oleh itu permohonan semakan kehakiman Wintercorn dibenarkan. Tidak berpuas hati, responden membuat rayuan. Mahkamah Rayuan membenarkan rayuan tersebut, membatalkan keputusan Mahkamah Tinggi dan memerintahkan agar pendirian dan keputusan responden dikekalkan. Oleh itu, rayuan ini oleh Wintercorn. Isu untuk pertimbangan adalah sama ada pembelian bahan pembungkusan oleh Wintercorn untuk mengisi minyak makan layak menerima pelepasan cukai di bawah butiran 57 Jadual A PU(A) 210.

Diputuskan, menolak rayuan:

(1) Permohonan dalam talian Wintercorn tidak menyatakan sebarang huraian atau kod tarif bagi jual beli bahan pembungkusan, tetapi hanya untuk pelepasan pembelian produk minyak makan sahaja. Oleh yang demikian, 17 sijil pengecualian yang diberikan oleh responden tidak diberikan untuk pengecualian jual beli bahan pembungkusan oleh perayu. Justeru, deklarasi dan permohonan pelepasan semasa tempoh tersebut mesti secara ketat merujuk kepada pembelian produk minyak makan (lihat perenggan 74–75).

(2) Tiada kekeliruan dalam butiran 57 Jadual A PU(A) 210 di mana ia tidak secara nyata atau tersirat memasukkan pembelian bahan pembungkusan. Butiran 53 Jadual A PU(A) 210 adalah peruntukan khusus yang mengawal pengecualian bagi bahan pembungkusan. Butiran 57 Jadual A PU(A) 210 adalah peruntukan umum yang memberi pengecualian untuk barangan yang dihasilkan di dalam negara dan dieksport. Ia tidak menyediakan pengecualian bagi bahan untuk pembungkusan semula. Pembelian bahan pembungkusan oleh perayu (untuk tujuan pembungkusan semula oleh peniaga) tidak dikecualikan di bawah pelepasan yang dikemukakan mengikut butiran 57 Jadual A PU(A) 210 (lihat perenggan 80 & 83–84).]

Cases referred to

Abdul Salam bin Husin v Majlis Angkatan Tentera & Anor [2011] 2 MLJ 573; [2011] 2 CLJ 1, FC (refd)

Ben-Odeco Ltd v Powlson (Inspector of Taxes) [1978] STC 460, HL (refd)

Commissioner of Customs (Import), Mumbai v Dilip Kumar and Co and Ors

[2018] 9 SCC 1, SC (refd)
Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation [1981] 35 ALR 151, HC (refd)
Director of Customs, Federal Territory v Ler Cheng Chye (Liquidator of Castwell Sdn Bhd, In Liquidation) [1995] 2 MLJ 600; [1995] 3 CLJ 316, SC (refd)
Estee Lauder Pty Ltd v Federal Commissioner of Taxation [1988] 80 ALR 314, FC (refd)
Expert Witness Institute v Customs and Excise Commissioners [2001] EWCA Civ 1882, CA (refd)
Extendicare Ltd v Borough of North York et a; 27), R (2d) 9, CA (refd)
Exxon Chemical (M) Sdn Bhd v Ketua Pengarah Dalam Negeri [2006] 1 MLJ 428; [2005] 4 CLJ 810, CA (refd)
Inland Revenue v Saxone, Lilley & Skinner (Holdings) Ltd 1967 SC (HL) 1, HL (refd)
JAW & S Property Management Nominees Pty Ltd v Commissioner of Stamp Duties [1989] 1 Qd R 530, SC (refd)
Littman v Barron (Inspector of Taxes) [1951] 2 All ER 393, CA (refd)
Mohd Najib bin Hj Abd Razak & Anor v Government of Malaysia and another appeal [2023] 6 MLJ 483; [2023] 10 CLJ 329, FC (refd)
Moulsdale t/a Moulsdale Properties v Revenue and Customs Commissioners (Scotland) [2023] UKSC 12, SC (refd)
National Land Finance Co-Operative Society Ltd v Director General of Inland Revenue [1994] 1 MLJ 99; [1993] 4 CLJ 339, SC (refd)
News Corp UK & Ireland Ltd v Revenue and Customs Commissioners [2023] UKSC 7, SC (refd)
Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal [2005] 3 MLJ 97, FC (refd)
Seruntun Maju Sdn Bhd v Pengarah Kastam Negeri Perak Jabatan Kastam Diraja Malaysia & Anor [2020] 6 MLJ 401; [2020] 1 LNS 92535, CA (refd)
State Transport Authority v Corp of City of Adelaide [1980] 24 SASR 481, SC (refd)
Sykt Bekerjasama-Sama Serbaguna Sungai Gelugor dengan Tanggungan Bhd v Majlis Perbandaran Pulau Pinang [1996] 2 MLJ 697; [1996] 3 CLJ 335, CA (refd)
Target Group Ltd v Revenue and Customs Commissioners [2023] UKSC 35, SC (refd)
Union Corp Ltd v Inland Revenue Commissioners [1953] AC 482, HL (refd)
Veronica Lee Ha Ling & Ors v Maxisegar Sdn Bhd [2011] 2 MLJ 141, FC (refd)

Legislation referred to

Customs Act 1967 s 65D(3)
Rules of the Court of Appeal 1994 r 18(2)
Sales Tax (Amendment) Regulation 2020 para 26D
Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No 2) Order 2020

Sales Tax (Persons Exempted from Payment of Tax) Order 2018 Schedule A, items 1, 2, 3, 4, 15, 16, 17, 23, 24, 32, 35, 53, 57, 62, Schedule B, items 1, 2, 3, 4, Schedule C, items 1, 2, 3, 4
Sales Tax Act 2018 ss 2(1), 8(1)

S Saravana Kumar (with Lim Chinn Wei and Dharshini Sharma) (Rosli Dahlan Saravana Partnership) for the appellant.
Rahazlan Affandi bin Abdul Rahim (with Liew Horng Bin and Nur Atirah Aiman bt Rahim) (Attorney General's Chambers) for the respondent.

Zabariah Yusof FCJ:

[1] The appeal herein originated from a judicial review application filed by the appellant herein ('Wintercorn') in the High Court against the decision of the Director General of Customs ('respondent'), who decided against Wintercorn as to the interpretation of item 57, Schedule A of the Sales Tax (Persons Exempted From Payment of Tax) Order 2018 ('PU(A) 210').

[2] The High Court allowed the judicial review application by Wintercorn which was subsequently reversed by the Court of Appeal upon appeal by the respondent.

[3] Aggrieved, Wintercorn filed an application for leave to appeal to this court, which was allowed premised upon the following questions of law:

(i) whether the Customs/respondent committed an error of law by disallowing the appellant's claim on sales tax exemption for packaging materials under item 57, Schedule A of the Sales Tax (Persons Exempted From Payment of Tax) Order 2018 given that the taxpayer/appellant had fulfilled all the stipulated requirements?

(ii) whether the Customs/respondent have any legal basis to disallow the claim on sales tax exemption for packaging materials under item 57, Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 after the issuance of the exemption certificate?

(iii) whether the Customs/respondent are entitled to impose additional conditions on the sales tax exemption for packaging materials under item 57, Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 in light of the amendment made through the Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No 2) Order 2020?

(iv) whether the Customs/respondent are entitled to impose additional conditions on the sales tax exemption for packaging materials under item 57, Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 based on the respondents' internal policy?

(v) whether the Customs/respondent have any legal basis to disallow the claim on sales tax exemption for packaging materials under item 57, Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 on the basis there is an existence of item 53, Schedule A considering that the item 53 was undisputed and was never raised during the Customs audit and before the High Court?

(vi) whether the Customs/respondents are entitled to dictate to the taxpayer/appellant which tax exemption to claim at the Court of Appeal when the existence of item 53, Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 was never raised during the Customs audit and before the High Court? and

(vii) whether the Court of Appeal was correct to accept the Customs/respondent's submission on item 53, Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 when item 53 did not form the basis of the Customs/respondent's decision during the course of the audit.

BACKGROUND FACTS

[4] Wintercorn is principally engaged in trading, namely, the export and sale of edible oil products. It does not manufacture the edible oil products. Instead, it sources for edible palm oil and packaging materials from Malaysian manufacturers.

[5] As for the packaging materials, it will be delivered to its appointed packer (a Malaysian business entity), which will then fill the edible oil into the packaging materials, such as jerrycan containers, PET bottles, tins and drums, following instructions from Wintercorn. The packaging materials will be labelled accordingly and packed into carton boxes. Upon completion, the goods will be delivered to the port for export to its customers.

[6] For purposes of its repacking exercise, Wintercorn applied online to the respondent for tax exemption on the purchase of the packaging materials under item 57, Schedule A of PU(A) 210 ('the Exemption Order') via the MySST portal. Its online applications via Form K2 did not declare any description or tariff code of the sale and purchase of the packaging materials, but only for tax exemption of the purchase of the edible oil products.

[7] Between 7 September 2018 and 5 April 2019, Wintercorn was granted 17 certificates of exemption by the respondent. The 17 certificates of exemption were specific and limited to the sale and purchase of edible oil products.

[8] On 15 October 2019, Wintercorn attended a meeting with the Customs Department, where it was informed that it is not eligible for tax exemption under item 57, Schedule A of PU(A) 210 concerning the packaging materials. On 19 December 2019, the Customs Department also issued a letter to Wintercorn, informing the same. On 5 February 2020, the respondent issued the bill of demand for sales tax amounting to RM3,697,852.16 to Wintercorn. The reasons as stated in the bill of demand are as follows:

> Mengikut Seksyen 38, Akta Cukai Jualan 2018, tuan adalah dituntut membayar Cukai Jualan Berjumlah RM 3,697,852.18 seperti di Lampiran A.
>
> 2. Tuntutan ini dikeluarkan atas sebab berikut:
>
> 2.1 Tidak layak menggunakan kemudahan pengecualian Cukai Jualan di bawah Seksyen 35 Akta Cukai Jualan 2018, Jadual A Butiran 57.

[9] On 6 September 2020, Wintercorn visited the Customs Department to seek clarification. It claimed that it had obtained a verbal confirmation from one custom officer, Tuan Ahmad Tarmizi, at the Customs Office that the sale and purchase of packaging materials falls within the ambit of item 57, Schedule A of PU(A) 210. However, the respondent denied ever having given any confirmation to Wintercorn, nor did Wintercorn have any evidence to prove its supposition of the oral confirmation by Tuan Ahmad Tarmizi.

[10] As a result, Wintercorn filed an application for judicial review for, inter alia, an order for certiorari to quash the respondent's decision in the bill of demand dated 5 February 2020.

PROCEEDINGS AT THE HIGH COURT

[11] On 6 September 2021 the learned High Court judge ('HCJ') heard the judicial review application. The HCJ made the following findings:

(1) Item No	(2) Persons	(3) Goods Exempted	(4) Conditions	(5) Certificate to be signed by
57	Any person approved by the Director General	All locally manufactured goods for export	(a) that the goods are purchased from a registered manufacturer;	The person approved by the Director General

			(b) that the goods be exported within six months from the date of purchase; (c) that the goods shall not be sold or otherwise disposed of in Malaysia except as sanctioned by the Director General and upon payment of the appropriate tax; (d) that the person approved shall pay all the taxes on the goods that cannot be accounted for; (e) that if the goods are not exported within six months from the date of purchase the person approved shall be liable	

			to pay all the taxes on the goods not exported.	

[12] Item 57, Schedule A of PU(A) 210 is reproduced as above.

[13] The HCJ found that Wintercorn had met all the criterias in item 57, Schedule A of PU(A) 210 where:

(a) it had obtained the exemption certificates issued by the respondent;

(b) it had purchased packaging materials from registered manufacturers; and

(c) the goods were exported within six months from the date of purchase.

[14] The HCJ viewed that the packaging materials are necessary for the export and sale of the edible oil to the overseas market as the edible oil needs to be packed in a suitable and safe container for sale. Wintercorn's business operation must be seen in totality and not in isolation. Without the packaging materials, Wintercorn will not be able to export and sell the edible oil. Thus, the HCJ held that there is no basis for the respondent to reject Wintercorn's application for tax exemption according to item 57, Schedule A of PU(A) 210. The failure of the respondent to give effect to the exemption order would render their decision illegal, ultra vires and unlawful.

[15] The respondent's entire basis in rejecting Wintercorn's application for exemption under item 57, Schedule A of PU(A) 210 is that:

(a) Wintercorn's description of goods and tariff codes declared in the Form K2 do not match with the packaging materials purchased; and

(b) the exemption is not intended for value added or processing activity ('the additional conditions').

[16] However, the HCJ found that nowhere in item 57, Schedule A of PU(A) 210 stipulates the above conditions to be qualified for such tax exemption. Thus, the respondent is estopped from denying the exemption, which was granted under the exemption order. The HCJ further held that, had the respondents applied its mind to the facts and circumstances of the present case, ie that Wintercorn had fulfilled the necessary conditions for the exemption to be granted, the respondent would not have arrived at the decision.

[17] The HCJ was of the view that the respondent had relied on their internal policy to impose additional conditions upon item 57, Schedule A of

PU(A) 210 and consequently rejected Wintercorn's application. The respondent is in no position nor authority to rely on its internal policy to impose the additional conditions to item 57, Schedule A of PU(A) 210 as:

(a) Parliament did not expressly enact such additional conditions in item 57, Schedule A of PU(A) 210 itself; and

(b) the wordings of item 57, Schedule A of PU(A) 210 are clear and simple. The Supreme Court in *National Land Finance Co-Operative Society Ltd v Director General of Inland Revenue* [1994] 1 MLJ 99; [1993] 4 CLJ 339 held that 'Unless there are clear words tax cannot be imposed ...'. Another principle is that where the meaning of a statute is in doubt the ambiguity must be construed in favour of the subject. Yet another principle is that an exemption from tax cannot be removed except by sufficiently clear words to achieve that purpose.

[18] The Malaysian jurisprudence is clear that the provisions of item 57, Schedule A of PU(A) 210 must be construed in favour of Wintercorn and read liberally. The Court of Appeal in *Exxon Chemical (M) Sdn Bhd v Ketua Pengarah Dalam Negeri* [2006] 1 MLJ 428; [2005] 4 CLJ 810, held that '... the principle that a provision in a taxing statute must be read strictly is one that is to be applied against revenue and not in its favour. The maxim in revenue law is this: no clear provision; no tax. If there is any doubt then it must be resolved in the taxpayer's favour'.

[19] By imposing the additional conditions above, the respondent is essentially usurping the role of Parliament and rewriting the statute.

[20] Thus, the respondent had exceeded their power and the decision was, therefore unlawful as being an unreasonable exercise of power.

[21] The HCJ was of the view that Wintercorn had derived a degree of legitimate expectation that has arisen from the exemption order whereby the exemption order will be given effect as Wintercorn is clearly eligible for the exemption provided under item 57, Schedule A of PU(A) 210. Further, Wintercorn's expectations have been created by the very conduct of respondent. Such expectations face an onslaught by changes and/or reversals in decisions that had been acted upon by Wintercorn. It is not open for the respondent to unilaterally impose additional conditions to item 57, Schedule A of the exemption order when Wintercorn had duly satisfied all the conditions stipulated therein. By doing so, it constitutes a denial of Wintercorn's legitimate expectations.

[22] Based on the aforesaid reasons, the HCJ held that the decision of the respondent is tainted with the error of law and/or irrationality and/or

unreasonableness. As such, Wintercorn's application for judicial review application is allowed with cost.

PROCEEDINGS IN THE COURT OF APPEAL

[23] The respondent filed an appeal to the Court of Appeal against the decision of the High Court. On 12 March 2024, the Court of Appeal allowed the respondent's appeal.

[24] The Court of Appeal held that there had never been any reversals or changes in decisions as to the tax treatment upon the trader's repackaging. Hence, the HCJ's appreciation of alleged reversals or changes in decision by the respondent was erroneous.

[25] Wintercorn had never raised any issue as to the tax treatment of the trader's repackaging for the entire period of time when the 17 impugned exemption certificates were issued. Wintercorn's query on 6 September 2020 regarding the appropriate tax treatment was made only after the issuance of the impugned exemption certificates. Thus, the declaration and application for exemption during that material time must strictly be for the purchase of edible oil products (and not the packaging materials). Therefore, the issuance of the impugned exemption certificates was never a 'prior' or 'initial' decision to exempt the purchase of packaging materials (for trader's repackaging).

[26] The alleged oral confirmation by Tuan Ahmad Tarmizi, the unauthorised person on 6 September 2020 cannot be considered as a valid decision to allow the exemption under the subject exemption. Tuan Ahmad Tarmizi was neither the Director General of Customs under the Sales Tax Act 2018 nor was he the Minister under the exemption order. The statutorily authorised person to decide on the appropriate tax treatment under the exemption order shall only be the Minister under the para 5(4) of the exemption order, which reads as follows:

> 5(4) If any question arises as to whether any particular goods are or are not included in the class of goods subject to exemption, such question shall be decided by the Minister.

[27] On the issue of legitimate expectation, it has not been shown that the present appeal falls under any of the circumstances or categories as set out in *Sykt Bekerjasama-Sama Serbaguna Sungai Gelugor dengan Tanggungan Bhd v Majlis Perbandaran Pulau Pinang* [1996] 2 MLJ 697; [1996] 3 CLJ 335, to justify any legitimate expectation to be afforded to Wintercorn. Neither did the respondent act in any manner that would fairly lead Wintercorn to believe that the subject exemption applies to the trader's repackaging. Nor has the law ever indicated that the purchase of packaging materials (for trader's repackaging)

should be read into the subject exemption. Wintercorn was therefore not entitled to the legitimate expectation that its purchase of packaging materials (for trader's repackaging) was exempted under the item 57, Schedule A of the exemption order under PU(A) 210.

[28] The specific exemption under item 53, Schedule A of PU(A) 210 is reproduced as below:

(1) Item No	(2) Persons	(3) Goods Exempted	(4) Conditions	(5) Certificate to be signed by
53	Any person approved by the Director General	Packing and packaging materials	(a) that the goods are imported or purchased from a licensed manufacturer; (b) that the goods are used solely for the packing or packaging of fresh eggs, fresh vegetables, fresh fruits, aquatic plants, aquarium marine life or cut flowers and then exported; (c) that the goods shall not be sold or otherwise disposed of in Malaysia;	The person approved by the Director General

			(d) that the person shall pay all the taxes on the goods that cannot be accounted for.	

[29] The manufacturer's exemption under item 4, Schedule B of PU(A) 210 is reproduced as below:

(1) Item No	(2) Persons	(3) Goods Exempted	(4) Conditions	(5) Certificate to be signed by
4	Any manufacturer approved by the Director General	Taxable raw materials and components (including packing materials) excluding petroleum solely for the use in the manufacture of exempted goods for export	(a) That the raw materials and components are imported or purchased from a registered manufacturer; (b) That the raw materials and components are used and the goods produced thereof are exported within twelve months from the date of import or purchase or such further period as approved by the Director General;	The person approved by the Director General

			(c) That the raw materials and components and the goods produced thereof shall not be sold or otherwise disposed of in the (sic) Malaysia except as sanctioned by the Director General and upon payment of the appropriate amount of tax; (d) That the raw materials and components shall be used solely for the manufacture of exempted goods for export;	

[30] It is pertinent to note that item 62 of Schedule A, items 1, 2, 3, and 4 of Schedule B, and items 1, 2, 3, and 4 of Schedule C of PU(A) 210 also expressly and explicitly mentioned and included references as to packing and packaging materials.

[31] After perusing through the provisions above, the Court of Appeal observed that the provisions are clear. When there is no ambiguity as to the provision, the court ought not to modify or qualify the provision beyond what was expressly prescribed within the provision (see *Abdul Salam bin Husin v Majlis Angkatan Tentera & Anor* [2011] 2 MLJ 573; [2011] 2 CLJ 1 (FC)).

[32] The Court of Appeal further held that:

(a) item 57, Schedule A of the PU(A) 210 ought not to be read in vacuo or in isolation of all other items of exemptions prescribed within the same exemption order (see *Mohd Najib bin Hj Abd Razak & Anor v Government of Malaysia and another appeal* [2023] 6 MLJ 483; [2023] 10 CLJ 329 (FC);

(b) the manufacturer's exemption in item 4, Schedule B, item 62 of Schedule A, items 1, 2, 3, and 4 of Schedule B, and items 1, 2, 3, and 4 of Schedule C of PU(A) 210 are all relevant not because it applies to exempt Wintercorn, instead, these other provisions were to be properly appreciated and identified in its true language and context of the exemption order;

(c) the language of the item 57, Schedule A of PU(A) 210 was neither of absence or silence. Instead, it was of purposeful omission or intended exclusion. This was not a case of ambiguity or lacunae in law. The reason that item 57, Schedule A of PU(A) 210 does not expressly or impliedly include the purchase of packaging materials is not because it is silent about the matter, instead, it is because the provision purposely intends to exclude and omit the exemption on packaging materials for traders, who undertake a trader's repackaging as part of their exportation's modus operandi (subject to the limited exceptions in item 53, Schedule A of the exemption order which does not include edible oil products); and

(d) the exemption as to packaging materials were specifically governed under item 53 of Schedule A of PU(A) 210. Since the exemption order already has a specific provision as to packaging exemption, there was no reason whatsoever for this court to modify item 57, Schedule A of PU(A) 210 and add packaging materials within the ambit of item 57, Schedule A of the same. This would run contrary to the clear intention of Parliament. Thus, item 57, Schedule A of PU(A) 210 shall be the general provision while item 53, Schedule A of the same shall be the specific provision, which could also operate as the exception as to the broad and general rule under item 57, Schedule A (see *Director of Customs, Federal Territory v Ler Cheng Chye (Liquidator of Castwell Sdn Bhd, In Liquidation)* [1995] 2 MLJ 600; [1995] 3 CLJ 316). As such, the specific provision under item 53, Schedule A of PU(A) 210 should prevail over the general provision under item 57, Schedule A of the same.

[33] In any event, Wintercorn would remain unsuccessful to claim tax exemption on the purchase of packaging materials under item 53, Schedule A of PU(A) 210 as this provision has clearly stipulated that the packaging materials must be used solely for the packing or packaging of fresh eggs, fresh vegetables, fresh fruits, aquatic plants, aquarium marine life or cut flowers. Wintercorn would also be ineligible for the manufacturer's exemption under

item 4, Schedule B of PU(A) 210, as this exemption only applies to manufacturers, and Wintercorn is not a manufacturer. A

[34] Based on the reasons above, the Court of Appeal found that the respondent was correct in finding that Wintercorn's exercise of trader's repackaging does not fall either within the broad exemption under item 57, Schedule A of PU(A) 210 or even the specific exemption under item 53, Schedule A, and the manufacturer's exemption (item 4, Schedule B) of the same. B

[35] The Court of Appeal held that it is obvious from the different tax treatments between a trader's packaging and a manufacturer's packaging are purely a matter of law and not mere internal policies. The different treatments are plain and obviously prescribed within the machinations of the exemption order itself, which is already well within Wintercorn's knowledge and reliance. C D

[36] The distinct and separate tax treatment as to traders is a statutory rule under para 26D of the Sales Tax (Amendment) Regulation 2020, which clearly prescribed that a trader can be eligible for tax exemption under the condition that the exempted goods had not undergone any value-added process. The rationale behind this provision is simply that any value-added process may result in additional profit on top of the initial and original form of exempted goods within the schedule. It is to prevent unjust tax treatments between manufacturers and traders, who both undertake the business of exportation of locally manufactured goods. E F

[37] Furthermore, any value-added process would be a totally separate process altogether beyond the exempted sale of goods scheduled within the exemption order. This value-added process (which falls outside the ambit of the exemption order) can neither in fact nor in law be applied to the exemptions under the exemption order. G

[38] Thus, the Minister's reasoning and explanation as to the element of 'value-added process' was not at all an additional criteria or additional internal policy beyond the confines of the exemption order. The element was already a statutory feature within the law that Wintercorn was legally expected to be aware of. H

[39] It was argued by Wintercorn that the trader's repackaging cannot be assessed in isolation as the trader's repackaging was crucial in making the exportation of the edible oil products to be possible. The Court of Appeal was of the view that Wintercorn had failed to prove that it was 'impossible' to export the edible oil products without the trader's repackaging. The packaging materials used in the trader's repackaging were not focused solely on rendering I

the mere 'possibility' of exportation, but instead were focused on a variety of sellable formats of edible oil products ie pet bottles, jerrycans, tins and drums. If the repackaging was done solely on the pretext of enabling exportation, then there was no reason whatsoever to have more than one format of repackaging.

[40] The variety of repackaged products, which were also conveniently labelled, would incur additional costs. These costs would be factored into the final value of the repackaged edible oil products. Thus, the trader's repackaging was to add value and variety of the goods, for them to be more sellable and marketable than the original products, which initially packed by the manufacturer. This value-added process of trader's repackaging was a totally separate and distinct process and exercise outside of mere trading of exempted goods within the exemption order. It was a value-added process that cannot simply be lumped together with the base business of the exportation of locally manufactured products.

[41] Also, item 53, Schedule A of PU(A) 210 provides limited exemption for packaging materials used for fragile and perishable goods, which requires proper and secure packaging to ensure safe exportation. Thus, it makes absolute sense that repackaging of such fragile and perishable goods would be purely intended for the safe exportation of the goods (and not any value-adding to the exempted goods).

[42] Therefore, the Court of Appeal found that the respondent's interpretation of item 57, Schedule A of PU(A) 210 was merely a holistic and proper interpretation of all relevant laws and was not any undue imposition of internal policies beyond the ambit of item 57, Schedule A of the same.

[43] For the above reasons, the Court of Appeal unanimously allowed the respondent's appeal with costs, set aside the High Court's decision and ordered that the respondent's stance and decision be reinstated. At the end of the judgment, the Court of Appeal ordered Wintercorn to pay to the respondent the sum of RM3,697,852.16 demanded by way of bill of demand dated 5 February 2020 with interests thereof.

PROCEEDINGS IN THE FEDERAL COURT

Submissions by Wintercorn

Questions (i) and (ii)

[44] Counsel for Wintercorn submitted that they had fulfilled all the conditions under item 57, Schedule A of PU(A) 210 and that the packaging

materials are necessary for the export and sale of the edible oil to the overseas market as the edible oil needs to be packed in a suitable and safe container for sale. Hence, the Customs must then give effect to the exemption and there is no discretion as to whether such exemption will be granted regardless of any factors.

[45] Counsel for Wintercorn applied the principle in *Exxon Chemical* which states that 'revenue statute that favour the taxpayer must be read liberally', the words 'all locally manufactured goods for export' under column (3) of item 57, Schedule A of PU(A) 210 must be interpreted in a way to include the Wintercorn's packaging materials used for the edible oil products.

[46] Had Parliament intended to exclude 'packaging materials' from the ambit of 'all locally manufactured goods for export', Parliament would have used express words to that effect (see House of Lords in *Inland Revenue v Saxone, Lilley & Skinner (Holdings) Ltd* 1967 SC (HL) 1). For examples, items 15, 16, 17, 23, 24, 32 and 35, Schedule A of PU(A) 210 have used the word 'excluding' in column (3) to exclude the goods which are not entitled to sales tax exemption.

[47] Given the aforesaid it was submitted by Wintercorn that question (i) is to be answered in the affirmative and question (ii) is to be answered in the negative.

Questions (iii) and (iv)

[48] Wintercorn submitted that the respondent had relied on their internal policy to impose additional conditions (Wintercorn's description of goods and tariff codes declared in the Form K2 must match with the packaging materials purchased and the exemption is not intended for value added or processing activity) to the grant of the exemption.

[49] Wintercorn referred to the Court of Appeal case in *Seruntun Maju Sdn Bhd v Pengarah Kastam Negeri Perak Jabatan Kastam Diraja Malaysia & Anor* [2020] 6 MLJ 401; [2020] 1 LNS 92535 which held that the respondent was barred from imposing additional conditions to a license initially granted to a duty-free shop on the basis that s 65D(3) of the Customs Act 1967 only allows the respondent to specify the conditions in the license and there are no provisions that allow the respondent to modify and vary the license or add further conditions. The respondent sought leave to appeal to the Federal Court which was subsequently dismissed. As such, the respondent in the present appeal is in no position or authority to rely on their internal policy to impose additional conditions to item 57 Schedule A of PU(A) 210. If Parliament had intended to impose such additional conditions, it begs the question why

Parliament did not expressly enact such condition in item 57, Schedule A itself. Reference was made to column (4), item 57, Schedule A of PU(A) 210 where this column (4) was subsequently amended to include a condition 'that the goods shall not be used or carry out any further process after purchased or acquired' (this amendment takes effect from 6 October 2020). The respondent's actions herein would be tantamount to rewriting the exemption order and defeating the true purpose of the exemption order.

[50] Para 26D of the Sales Tax (Amendment) Regulation 2020 only takes effect from 1 July 2020 and it does not apply retrospectively to Wintercorn. The Court of Appeal therefore, had erred in deciding that the element of 'value-added process' was not an additional criteria or additional internal policy beyond the confines of the exemption order.

Questions (v), (vi) and (vii)

[51] It was submitted that item 53, Schedule A of PU(A) 210 was never raised during the audit stage or at the High Court. In *Veronica Lee Ha Ling & Ors v Maxisegar Sdn Bhd* [2011] 2 MLJ 141, this honourable court held that a litigant should not be permitted to succeed in an appeal upon a point not raised or pleaded before the court of first instance. Thus, the Court of Appeal erred in accepting the arguments in relation to item 53 Schedule A of PU(A) 210. In any event, Customs may put forward the new arguments on item 53 Schedule A of PU(A) 210 with the leave of the Court of Appeal under r 18(2) of the Rules of the Court of Appeal 1994. However, no prior leave was granted to the respondents in raising the arguments. Hence, it was submitted that questions (v), (vi) and (vii) should be answered in the negative as otherwise it would give the respondent two bites of the cherry by enabling them to challenge the High Court's decision on an argument that was not raised before the High Court.

[52] Be that as it may, Wintercorn argued that the mere existence of item 53, Schedule A of PU(A) 210 does not take away/deprive Wintercorn of its right to claim sales tax exemption under item 57, Schedule A as Wintercorn has fulfilled all the requirements as discussed above.

OUR ANALYSIS AND DECISION

Principles governing the interpretation of taxing statute and tax exemptions statutes

[53] *Halsbury Laws of England* (5th Ed) has set out the principles governing the interpretation of tax exemptions provisions, which are as follows:

> Where a particular instrument falls within the general terms of a head of charge, *the onus of proving that it is nevertheless within an exemption from that head lies on the*

person alleging the exemption [citing as authority at footnote [7] *Yelland v Winter* (1885), and *Holmleigh* (1958)]. *There is no general rule that ambiguities in the wording of the exemption should be construed in his favour* [citing as authority at footnote [8] *Littman v Barron* (1951)]. An exemption in general words is limited to the scope of the Act granting it [citing as authority at footnote [9] *Re Royal Liver Friendly Society* (1870), *Gilpin* (1871), *Bath Corpn* (1871), *Warrington* (1807)]. (para [309], pp 198–199, Volume 96);

... the normal canons of statutory construction apply to taxing Acts, but in addition there are certain other considerations which may be regarded as special in the construction of such Acts. Thus, it is a general principle of fiscal legislation that to be liable to tax the subject must fall clearly within the words of the charge imposing the tax, otherwise he goes free; and that it is for the Crown to establish that the charge prima facie extends to the subject matter sought to be charged. *Whether this strict rule of construction still applies is questionable in view of the very wide deeming provisions enacted to prevent varying form of tax avoidance. However, this may be, if the subject is within the scope and terms of the charge, he cannot escape unless he can bring himself fairly within an express exemption conferred by the statute* [citing as authority at footnote [4] *Maughan* (1893), *Fleming* (1973), *Sansom* (1976), *Ben-Odeco Ltd v Powlson (Inspector of Taxes)* (1978)]. (para [25], pp 43–44, Volume 58) (Emphasis added.)

[54] The onus lies on a taxpayer who claims tax exemption to establish that he has satisfied the requirements and falls within the exemption (see also the House of Lords' case of *Union Corp Ltd v Inland Revenue Commissioners* [1953] AC 482, at p 503). The taxpayer, is to establish that it comes within the exemption, so that, if the court is left in doubt whether a fair interpretation of the words of the exemption cover the supplies in question, the claim to the exemption must be rejected (see *Target Group Ltd v Revenue and Customs Commissioners* [2023] UKSC 35 at [18]; *State Transport Authority v Corp of City of Adelaide* [1980] 24 SASR 481).

[55] *Littman v Barron (Inspector of Taxes)* [1951] 2 All ER 393 as per Cohen LJ, established the principle that in cases of ambiguity, a *taxing statute* should be construed in favor of a taxpayer. However, this, principle is not applicable to a provision which gives a taxpayer *relief* in certain cases from a section clearly imposing liability (*Extendicare Ltd v Borough of North York* et a; 27), R (2d) 9 at pp 4–5; *Commissioner of Customs (Import), Mumbai v Dilip Kumar and Co and Ors* [2018] 9 SCC 1).

[56] One of the principles of interpretation of a tax exemption provision is the need to interpret such provisions narrowly/strictly. This approach is stated in *Crawford, Statutory Construction* at pp 506–508 which states that:

Provision providing for an exemption may be properly construed strictly against the person who makes the claim of an exemption. In other words, before an exemption can be recognized, the person or property claimed to be exempt must come clearly

> within the language apparently granting the exemption .... Moreover exemption laws are in derogation of equal rights, and this is an equally important reason for construing them strictly. One other possible instance exists in which a tax law may be liberally construed, if the law is designed to prevent fraud upon the Revenue, even though it is a penal Act, some decisions favour a liberal construction. Such a statute, however, is more properly a statute against fraud rather than a taxing statute, and for this reason properly subject to a liberal construction in the government's favour.

[57] This approach was reaffirmed in the decision of the UK Supreme Court in *Target Group Ltd v Revenue and Customs Commissioners* [2023] UKSC 35 at [55]–[56]:

> [on whether to prefer the narrow interpretation or the wider interpretation] CJEU case law [quoting the EU cases] made it clear that the narrow interpretation was the correct one. *That was consistent with the need to interpret the exemption strictly, the fact that its subject matter was financial transactions* and its rationale of covering cases where it was not possible to identify the tax base' (para [1392] on *Target Group Ltd v Revenue and Customs Commissioners* [2023] UKSC 35 at [55]–[56])
>
> With regard to EU law, it was well established that *zero-rating provisions had to be interpreted strictly, because they constituted exemptions to the general principle that supplied of goods and services by taxable persons should be subject to VAT*. (para [1393] on *News Corp UK & Ireland Ltd v Revenue and Customs Commissioners* [2023] UKSC 7 at [21], [38]–[40], [106]–[107]);
>
> It was important to bear in mind that the court's task in the present appeal was to construe para 13 of Sch 10 *in its context so as to give effect to the purpose* for which para 13, as part of paras 12 to 17 of Sch 10, had been enacted. *One had to start, as HMRC had submitted, with the principle that Sch 10 was aimed at ensuring that exempt businesses could not recover input tax. On the construction favoured by M, that purpose would be defeated* (para [1391] on *Moulsdale t/a Moulsdale Properties v Revenue and Customs Commissioners (Scotland)* [2023] UKSC 12 at [58], [60]. (Emphasis added.)

[58] The Supreme Court in *Target Group* explained the rationale for exemptions to be strictly interpreted so as not to render the concept underpinning a particular tax exemption or tax charged 'meaningless' (refer at para [42]. *News Corp UK & Ireland Ltd v Revenue and Customs Commissioners* [2023] UKSC 7 expressed the same sentiment at para [38] when it ruled that:

> In accordance with well-established principles ... exemptions from VAT must be construed strictly. Nevertheless, they *must also be construed in a manner which is consistent with the objectives which underpin them* and not in such a way as to deprive them of their intended effects.

[59] Chadwick LJ in *Expert Witness Institute v Customs and Excise Commissioners* [2001] EWCA Civ 1882 had elucidated what is meant by 'strict' interpretation of tax exemption provisions when he said:

> 17. ... A *'strict' construction* is not to be equated, in this context, with a restricted construction. *The court must recognise that it is for a supplier, whose supplies would otherwise be taxable, to establish that it comes within the exemption; so that, if the court is left in doubt whether a fair interpretation of the words of the exemption cover the supplies in question, the claim to the exemption must be rejected*. But the court is not required to reject a claim which does not come within a fair interpretation of the words of the exemption because here is another, more restricted, meaning of the words which would exclude the supplies in question.

[60] From the aforesaid, tax exemption provisions must be construed in a manner which is consistent with the objectives which underpin them and not in such a way so as to deprive them of their intended effects.

[61] An exemption provision should be construed in a manner 'to make as much sense as it can be of the text of the statutory provisions read in its appropriate context' so as to avoid an absurd consequence where 'the obvious purpose of the provisions would be defeated' if a wider/over-inclusive construction of the exemption is adopted (see *Moulsdale t/a Moulsdale Properties v Revenue and Customs Commissioners (Scotland)* [2023] UKSC 12 at [58], [60], [67]. The Supreme Court in *Moulsdale* was met with a situation where, 'although the drafting of this legislation is unfortunate' [at para 60] the Supreme Court employed a construction of an exemption which 'makes as much sense as it can of the text of the statutory provisions read in its appropriate context' (at para [67] to avoid an absurd consequence where the obvious purpose of the provisions would be defeated 'if a wider/over-inclusive construction of the exemption is adopted' (at [60]).

[62] Useful guidance can be distilled from subsequent cases of the Australian courts in:

(a) *JAW & S Property Management Nominees Pty Ltd v Commissioner of Stamp Duties* [1989] 1 Qd R 530 at p 537;

(b) *Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation* [1981] 35 ALR 151 at pp 170, 176, 180–181;

(c) *Extendicare Ltd v Borough of North York* et a; 27), R (2d) 9 at pp 4–5; and

(d) *Estee Lauder Pty Ltd v Federal Commissioner of Taxation* [1988] 80 ALR 314 at pp 325–326,

which emphasised, apart from construing the wordings of the provision in question, is to look at the context in which it occurs and the objects of the provision of which it is part of. The decisions of the aforesaid cases are consistent with the generally accepted way of construing sales tax legislation, where regard is to be had, to the context, scheme and purpose of the legislation.

[63] In the local context, in *Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal* [2005] 3 MLJ 97 at [12]–[15], [78]–[79], it established the single approach to adopt in interpreting tax statute. Whether it is a charging provision or an exemption, the approach to take is the purposive construction based on the 'Ramsay approach' where the words used should be considered in the context and scheme of the relevant Act as a whole, and its purpose should be considered.

[64] Daniel Greenberg CB, *Caries on Legislation* (13th Ed, 2025) at [1097]–[1107] state what is meant by the Ramsay approach:

(a) 'In all cases the court must consider whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically';

(b) 'In the task of ascertaining whether a particular statutory provision imposes a charge, or grant an exemption from a charge, the Ramsay approach is generally described as involving two components or stages. The first is to ascertain the class of facts (which may or may not be transactions) intended to be affected by the charge or exemption. This is a process of interpretation of the statutory provision in the light of its purpose. The second is to discover whether the relevant facts fall within that class, in the sense that they answer to the statutory description. This may be described as a process of application of the statutory provision to the facts';

(c) 'Both interpretation and application share the need to avoid tunnel vision. The particular charging or exempting provision must be construed in the context of the whole statutory scheme within which it is contained. The identification of its purpose may require an even wider review, extending to the history of the statutory provision or scheme and its political or social objective, to the extent that this can reliably be ascertained from admissible material';

(d) 'Likewise, the facts must also looked at in the round';

(e) 'In looking at particular words that Parliament uses what the interpreter is looking for is the relevant fiscal concept';

(f) 'In approaching the factual question whether the transaction in question answers the statutory description the facts must be viewed realistically'; and

(g) 'A realistic view of the facts includes looking at the overall effect of a composite transaction, rather than considering each step individually'.

[65] The well settled principle is that when the words in a statute are clear, plain and unambiguous and the only one meaning can be inferred, the courts

are bound to give effect to the said meaning irrespective of the consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. Nevertheless, if the plain language results in absurdity, the court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose. Not only that, if the plain construction leads to anomaly and absurdity, the court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation (see *Commissioner of Customs (Import), Mumbai v Dilip Kumar and Co and Ors* [2018] 9 SCC 1).

Applying the above principles in the interpretation of the provisions to the facts of the present appeal

[66] Section 2(1) of the Sales Tax Act 2018 provides as follows:

> 'goods' means all kind of movable property; and 'taxable goods' means goods of a class or kind not exempted from sales tax.

[67] Pursuant to s 8(1) of the Sales Tax Act 2018, Sales Tax *shall be charged* and levied on all taxable goods that are:

(a) *manufactured in Malaysia by a registered manufacturer* and sold, used or disposed off by him: or

(b) imported into Malaysia by any person.

Sales tax is not charged on:

(i) *persons exempted* under PU(A) 210;

(ii) *goods listed under Sales Tax (Goods Exempted From Tax)* Order 2018; and

(iii) manufacturing activities which are exempted by Minister Of Finance under Sales Tax (Exemption From Registration) Order 2018.

[68] Wintercorn is a trading company (not a manufacturer) engaged in the export and sale of edible oil products. Wintercorn had applied online and generated 17 certificates of tax exemption under item 57, Schedule A of the exemption order of PU(A) 210 via the MySST portal for *the exemption of the purchase of edible oil products*.

[69] The online application by Wintercorn *did not declare any description or tariff code of the sale and purchase of the packaging materials*.

[70] The issue is whether the purchase of packaging materials by

Wintercorn, such as jerrycan containers, PET bottles, tins and drums to fill edible oil are eligible for tax exemption under item 57, Schedule A of PU(A) 210.

[71] The respondent was of the view that Wintercorn was not entitled to tax exemption under item 57, Schedule A of PU(A) 210 for the purchase of the packaging materials.

[72] Hence, the present appeal focuses on the construction and interpretation of item 57 Schedule A of PU(A) 210 namely whether the exemption the same applies to the purchase of packaging materials.

[73] Wintercorn is a trading company and not a manufacturer exporting edible oil products and also not that of exporting packaging materials. It does not manufacture the edible oil products. It sources for edible palm oil and outsources the packaging of the edible oil to a third-party appointed packer.

[74] Pursuant to its repacking exercise, Wintercorn applied online for the exemption on the purchase of the packaging materials under item 57, Schedule A of PU(A) 210 via the MySST portal. *Its online applications via Form K2 did not declare any description or tariff code of the sale and purchase of the packaging materials, but for the exemption of the purchase of the edible oil products only*. Hence, the 17 certificates of exemptions which were granted by the respondent were not granted for the exemption on the sale and purchase of the packaging materials by the appellant (for trader's repackaging) which, in any event were never declared by Wintercorn in Form K2.

[75] Thus, the declaration and application for exemption during that material time *must strictly be for the purchase of edible oil products* (and not the purchase of packaging materials).

[76] The packaging materials were purchased by Wintercorn for the purpose and in the process of exporting the edible oil. The packaging materials purchased by Wintercorn will then be delivered to its appointed packer, a separate Malaysian entity, which will then fill the edible oil into the packaging materials, such as jerrycan containers, PET bottles, tins and drums, according to instructions of the appellant. The packaging materials is then labelled accordingly and packed into carton boxes, which will be delivered to the port for export to its destinations.

[77] The packaging materials are just to facilitate the exports of the edible oil. Wintercorn is not in the business of exporting the packaging materials.

[78] Item 4 of Schedule B, item 62 of Schedule A, items 1, 2 and 3 of Schedule B and item 4 of Schedule C of PU(A) 210 which are provisions on manufacturers' exemption are relevant to be considered when construing the intent and context of the exemption order under item 57 Schedule A of PU(A) 210.

[79] Item 57 Schedule A of PU(A) 210 is to be read harmoniously with item 53 of Schedule A, item 62 of Schedule A, items 1, 2 and 3 of Schedule B and item 4 of Schedule C of the same.

[80] A perusal of the said items under the Schedules as aforesaid, show that there is no ambiguity in item 57 Schedule A of PU(A) 210. We agreed with the Court of Appeal that item 57 Schedule A of the same did not expressly or impliedly include the purchase of packaging materials. The provision purposely intended to exclude and omit the exemption on packaging materials for traders, for exports of the products which they had purchased from a manufacturer (subject to limitation exceptions in item 53 Schedule A of the exemption order of PU(A) 210 which does not include edible oil products).

[81] Item 57 Schedule A of PU(A) 210 provides for exemption of locally manufactured goods. It ensures that goods manufactured in Malaysia are the same items exported abroad without involving any change or valued added process. Any value-added process may result in additional profit on top of the initial and original form of exempted goods within the schedule. This is to prevent unjust tax treatments between manufacturers and traders, who both undertake the business of exportation of locally manufactured goods.

[82] The element of value-added process is within the confines of the exemption order and forms part of the statutory feature within the law. The trader's repackaging was to add value to the goods exported. This is a totally separate and distinct process not merely trading of exempted goods within the exemption order. This value-added process cannot be considered together with the base business of the exportation of locally manufactured products by the appellant.

[83] Item 53 of Schedule A of PU(A) 210 is the specific provision which governs *exemption for packaging materials*. Item 57 of Schedule A of the same is a general provision which provides *exemption for locally manufactured goods for exports*. It does not provide exemption for repackaging materials. Item 53 Schedule A is the specific provision, which operates as the exception to the broad and general rule under item 57, Schedule A.

[84] As the exemption order already has a specific provision as to packaging exemption, there was no reason whatsoever for this court to modify item 57,

Schedule A of PU(A) 210 and add packaging materials within the ambit of item 57, Schedule A of the same. This would run contrary to the intention of the Legislature. This is in sharp contrast to item 62 of Schedule A, items 1, 2, 3 and 4 of Schedule B and items 1, 2, 3 4 of Schedule C of the exemption order, where the express words in column (3) (goods exempted) of 'including packing materials' and 'packaging material' engaged therein, dictates that the express mention of those wordings in those items means the exclusion of the same in item 57, Schedule A of PU(A) 210. Hence, the appellant's purchase of packaging materials (for trader's repackaging) was not exempted under the subject exemption under item 57.

[85] The scheme of the provisions of the exemption order from the various schedules as aforesaid provide a means of prescribing different tax treatment between a trader's packaging and a manufacturer's packaging which is a matter of law, namely a matter of proper interpretation of the subject exemption alongside all relevant laws and statutes governing the distinct tax treatments between a manufacturer and a trader.

[86] In any event, Wintercorn has not fulfilled the conditions of the requirements under item 57 of the Schedule A of PU(A) 210, namely Wintercorn has not proved that the packaging materials purchased was in fact 'exported' within six months from the date of purchase as required in the condition thereto.

[87] The principle applicable in construing a provision that provide exemption or relief from tax is that the provision must be construed strictly against a taxpayer. The burden is upon Wintercorn being a taxpayer to prove that it qualifies for the tax exemption it claimed. In this appeal Wintercorn has failed to do so.

[88] The accepted principle in tax relief provisions is that in case of ambiguity a taxing statute should be construed in favour of a taxpayer does not apply to a provision giving a taxpayer relief in certain cases from a section clearly imposing liability (as per Cohen LJ in *Littman v Barron (Inspector of Taxes)* [1951] 2 All ER 393 at pp 393 and 398 and *Ben-Odeco Ltd v Powlson (Inspector of Taxes)* [1978] STC 460 at p 471). In the present appeal there is no ambiguity in the provisions as aforesaid, hence there is no necessity to even invoke *Littman v Barron*.

[89] As the present appeal involves the construction and interpretation of the provisions of the relevant schedules of PU(A) 210, we do not find it necessary to answer the questions of law posed.

[90] Given the aforesaid, we found that the Court of Appeal did not err in

setting aside the High Court decision and ordering that the respondent's decision be reinstated. We therefore dismissed the appeal by Wintercorn with no order as to costs.

Appeal dismissed.

Reported by Nabilah Syahida Abdullah Salleh